

In light of this new law, our Order compelling the government to turn over a mirror image computer hard drive to the Defendant must be vacated.

Defendant has filed a response arguing that the above-cited law is not retroactive and does not preempt our Amended Order dated June 29, 2006. We disagree. We see no reason why this new rule of discovery should not be applicable to a case pending at the time of the effective date and at a stage before pretrial motions have been filed.

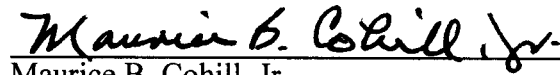
Defendant also argues that the contents of the hard drive at issue cannot be made reasonably available to defendant because the defense expert is located far from this jurisdiction and thus will entail substantial, unreasonable, and undue expense. However, the relevant standard does not consider expense or location of the expert as factors to consider when determining whether the material is reasonably available to a defendant. Instead the law provides that "property or material shall be deemed to be reasonably available to the defendant if the Government provides ample opportunity for inspection, viewing, and examination at a Government facility of the property or material by the defendant, his or her attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial." There is no indication that the government will not comply with this directive.

Therefore, the following Order is entered.

AND NOW, to-wit, this 19th day of August, 2006, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. The government's Motion for Reconsideration (Doc. 17) be and hereby is GRANTED
2. Upon reconsideration of the Court's Amended Order dated June 29, 2006 (Doc. 16), said Order granting the Defendant's motion to compel is hereby VACATED in light of new law, except that part of the Amended Order that extended the time Defendant has to file pretrial motions until September 27, 2006.

3. The Defendant's Motion to Compel (Doc. 11) be and hereby is DENIED.



Maurice B. Cohill, Jr.
Senior United States District Judge

cc: counsel of record